Secular Coalition for Arizona

April 23, 2019

Governor Doug Ducey
1700 W Washington St
Phoenix, AZ 85007

Subject: Establishment of Religion

Dear Governor Ducey,

I am writing on behalf of Secular Communities for Arizona. Our purpose as a statewide organization is to ensure secular government by endorsing the constitutional principle of separation of church and state in both the Arizona and U.S. Constitutions.

We are concerned about what appears to be your official government Facebook page dated April 21, 2019, 6:00 a.m. and labeled "Easter Greeting." It goes on with the tag line, "He is risen. Have a happy and blessed Easter." In the center of the page is pasted a highly visible quote from the Gospel of John with a Latin cross stating, "Jesus said to her, I am the resurrection and the life. He who believes in me, though he may die, he shall live."

I understand that also on April 19, Good Friday, you posted another quote from the New Testament of the Bible i.e. John 3:16, and that you also said "Happy Passover" in what may have been a recognition of the Jewish religion.

The Establishment Clause of the First Amendment of the U.S. Constitution prohibits government sponsorship of religious messages. All governmental actions must: 1) have a secular purpose, 2) not have the effect of advancing or inhibiting religion, and 3) not result in excessive entanglement between church and state. It is inappropriate for the state government to endorse a particular religion, one religion over another, or religion over non-religion according to both the State and Federal Constitutions. To send a government greeting on religious holidays, the government must send to every single religion. According to the Encyclopedia of American Religions, there are 1,584 different religions in the world (or according to another source 4,200) ranging from Ancient Order of the Druids to Zotheria. If you are going to recognize Christians, you have to recognize Wiccans and the Satanic Temple too. Under the Arizona Constitution, you cannot treat the non-religious differently, so you'll have to recognize them as well, I suppose on Darwin Day? The best course for government is to stay out of it completely and leave it to the personal realm.

Elected officials should not use their government position and government property to promote their religious views. The governor's office is to represent and protect the rights of all residents of Arizona, including those who do not believe in a monotheistic god or any gods at all. Therefore, it is inappropriate for government entities to erect or sponsor religious symbols or displays on government property. Displays of the Ten Commandments on public property and in schools have been struck down as

unconstitutional. Christian crosses are not allowed at war memorials because it would suggest that only Christian soldiers are being honored. Religious holiday displays may be on public property if the religious aspect is not the sole focus but it is more a holiday display in general.

The Supreme Court has said time and time again that the "First Amendment mandates government neutrality between religions and between religion and non-religion." *McCreary Cnty. Ky, v. American Civil Liberties Union of Ky*., 545 U.S. 844, 860 (1995); *Wallace v. Jaffree,* 472 U.S. 38, 53 (1985); *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968); *Everson v. Board of Educ. Of Ewing*, 330 U.S. 1, 15-16 (1947). This principle is violated when a government employee promotes religion on behalf of the state. The Supreme Court has ruled, "(t)he Establishment Clause at the very least, prohibits government from appearing to take a position on questions of religious belief." *Cnty of Alleghany v. Am. Civil Liberties Union Greater Pittsburgh Chapter*, 492 U.S. 573 (593-4) 1989.

No one seeing these statements on a government Facebook page should be made to feel excluded and like "outsiders, not full members of the political community," *McCreary*, 545 U.S. 860 (citations omitted) because a government employee, in fact the governor, is professing a personal religious preference while speaking on behalf of the state government. *Lynch v. Donnelly*, 465 U.S 668, 688 (1984) (O'Connor, J., concurring)

Courts have struck down symbolism that unites government with religion. In *Harris v. City of Zion, Lake County, Ill*., 927 F. 2d 1491 (7th Cir. 1991) the court ruled that the city seals of Zion and Rolling Meadows that contained Christian symbols endorsed religion in violation of the Establishment Clause. Such symbols convey a message that is inconsistent with the first amendment (*Harris* at 1412). We think you'll agree that the state must be even-handed and avoid any appearance of bias toward some citizens, and hostility toward others.

The Arizona State Constitution provides even stronger assurances to maintain the separation of church and state than does the U.S. Constitution.

> Article II section 12 of the State Constitution provides:
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> 12. Liberty of conscience; appropriations for religious purposes prohibited; religious freedom
> Section 12. The liberty of conscience secured by the provisions of this constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching his religious belief in any court of justice to affect the weight of his testimony.

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Spending taxpayer money placing religious messages on a government Facebook page is beyond the scope of secular government. The state Constitution makes it clear that no state monies may be spent posting religious messages on government property. The Establishment Clause prohibits not only government funding of religious institutions but also the use of the money for any "specifically religious" activities. Obviously the April 21 statement can have no other purpose than a "specifically religious" one.

These actions also violate Article XX §1 of the Arizona Constitution that provides:

> First. Toleration of religious sentiment
> First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

Overall, 23% of Americans identify as non-religious. That 8-point increase since 2007 and 15-point jump since 1990 makes the "nones" the fastest growing identification in America. Nationally about 35% of millennials are non-religious. The most recent Pew Research poll found that 27% of Arizonans say they have no religion, compared to 23% nationally. For the State government to sponsor any kind of religious message immediately alienates more than a quarter of Arizona citizens in violation of the Arizona Constitution. Restricting any religious symbols or displays on government property allows government entities to remain completely religiously neutral and conform to the court's interpretation of the Establishment Clause and the reason for the provisions i.e. to avoid community dissention.

On behalf of citizens and taxpayers, we urge you to remove the effusive Easter greeting that is much too tied to religion from the Facebook page and to desist in the future from expressing such religious sentiment on government property or time. The government must respect the rights of conscience of all citizens, including those who in good conscience reject belief in a god.

Please inform us in writing of the actions you are taking on this matter. We look forward to a reply at your earliest convenience.

Sincerely,

Dianne Post, Attorney

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